THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO.17722 of 2007

Date:21.08.2007

Between:

Smt.Geeta Devi Nagala Tiwari

...Petitioner

And

The Chief Executive Officer and others

...Respondents

O R D E R:

The petitioner purchased an extent of 42 square yards of land with house in premises bearing No.14-4-269/1 at Multanipura, Begum Bazar, Hyderabad, through a sale deed, dated 16.04.2007, from Smt.Bilkis Begum. The latter is said to have been gifted the property way back in the year 1980. The donor is said to have purchased the property in the year 1971. It is stated that since the house has become old, the petitioner demolished the same and has undertaken fresh construction.

The first respondent addressed a letter, dated 14.08.2007, to the Station House Officer, Shah Inayathgunj Police Station, Hyderabad, the second respondent herein, alleging that the petitioner had encroached into muslim graveyard and requested the second respondent to stop the construction and to demolish the same immediately with the assistance of the officials of the Municipal Corporation and the Wakf Board. The same is

challenged in this writ petition.

Sri B.Vijayasen Reddy, the learned counsel for the petitioner submits that the property is covered by two sale deeds and a gift deed and in all of them, the northern boundary was shown as muslim graveyard and that the petitioner never encroached into any graveyard. He submits that the Wakf Act, 1995 (for short 'the Act') contains a detailed procedure to prevent and remove encroachments and even to recover the encroached properties and that the impugned letter cannot be traced to any provision of law.

The learned Standing Counsel for the first respondent, on the other hand, submits that the Inspector Auditor of the Wakf, City Circle No.II submitted a report, dated 08.08.207, alleging that the petitioner had encroached into muslim graveyard and with a view to prevent encroachment, the impugned letter has been addressed. He contends that the impugned letter is without prejudice to the steps that can be taken by the first respondent under the Act.

The petitioner had acquired a small plot through sale deed, dated 16.04.2007. She demolished the old structure and commenced the new construction. The first respondent addressed a letter to the second respondent stating that the petitioner had encroached into muslim graveyard and on that basis, required the second respondent not only to stop the construction, but also to demolish whatever has been brought about by the petitioner.

A perusal of the sale deed in favour of the petitioner discloses that the northern boundary of the plot purchased under it is muslim graveyard. Assuming that the petitioner had encroached into any portion of the graveyard, as an extraordinary measure, the Act confers enormous powers on the first respondent himself under Section 54 to direct removal of encroachment. Without even having the necessity to go to a regular Court or the Wakf Tribunal, the first respondent can avail the service of the Revenue Divisional Officer to enforce the orders that may have been passed under Section 54 of the Act. Such being the procedure prescribed under law, the first respondent cannot be permitted to circumvent the same and take the assistance of the Police officials to harass the petitioner. Further, the impugned letter cannot be referred to any provision of law much less the Act.

For the foregoing reasons, the writ petition is allowed and the impugned proceedings are set aside. It is, however, left open to the first respondent to take necessary steps, as provided for, under the Act, if he is so advised. There shall be no order as to costs.

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21.08.2007

kdl